

Nationsway Transport Service, Inc. and Highway and Local Motor Freight Employees Local Union No. 667, affiliated with the International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 26-RC-7656

January 20, 1995

DECISION ON REVIEW AND ORDER

BY MEMBERS BROWNING, COHEN, AND
TRUESDALE

On September 16, 1994, the Acting Regional Director for Region 26 issued a Decision and Direction of Election in which he found appropriate a unit of office employees working in the general office area of the Employer's terminal in Memphis, Tennessee. In so finding, he excluded from the unit found appropriate (a) Office Manager Osment, and (b) management trainees Benjamin, Brunner, Johnson, and Westbrook. The Employer filed a timely request for review of both these issues, and the Petitioner filed an opposing brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board grants the Employer's request for review. Having carefully evaluated the record, the Board concludes that Osment should be included in the unit found appropriate, and that the four management trainees should be excluded.

The Acting Regional Director found Office Manager Osment to be a supervisor within the meaning of Section 2(11) and excluded her from the unit based on evidence that unit employees regard her as their supervisor and that she would be the one to ask if an employee needed time off. He also concluded that Osment lacked a sufficient community of interest with unit employees because of her performance of personnel duties in addition to the work she performs in common with the unit employees.

On review of the record we find no adequate basis for excluding Osment from the unit. Most significantly, there is no evidence that Osment actually grants employees time off, much less evidence that such conduct would be based on discretionary authority invested in her. In addition, her ministerial functions regarding personnel matters do not distinguish her overall work from the office work of the unit employees to the extent that she can be found lacking an adequate community of interest.¹ Accordingly, we conclude that Osment is not a supervisor and that she should be included in the unit.

¹ In addition, with respect to the Petitioner's primary argument before the Acting Regional Director for excluding Osment, her access, per se, to confidential information, such as employees' personnel records, is insufficient to exclude her as a confidential employee. See, e.g., *Inland Steel Co.*, 308 NLRB 868, 873 (1992).

We affirm the Acting Regional Director's determination that the four management trainees should be excluded from the unit because of an insufficient community of interest with the unit employees, based on the following analysis.

The judge in *Curtis Industries*, 218 NLRB 1447, 1452 (1975), set forth four factors that the Board had examined in evaluating the bargaining unit status of management trainees under community-of-interest principles.² First, with regard to the hiring of trainees, the evidence does not establish sufficiently that the Employer's selection of trainees is guided by the candidate's relevant education or experience. Selection of trainees, however, is based on the Employer's review of a "management trainee candidate questionnaire" that evaluates a candidate's likely attitude toward the company's corporate environment, and interviews are conducted by seven corporate officials. In addition, management trainees enter the program with the expectation of becoming managers.

Second, the record establishes that there is no per se "up-or-out" policy. Rather, the Employer would attempt to find suitable nonmanagement positions for failed candidates. Significantly, such positions would not necessarily be unit positions.³

Third, the record makes clear that the Employer has a relatively formal management-trainee program. Thus the training lasts 4 to 7 years. The exact nature of the training during that period is left to the discretion of the manager supervising the training. The trainees may be assigned to any of five company areas. There is no predetermined length of time for any of these training assignments, indicating that the Employer in its discretion can reassign the trainees to different areas, including those which are removed from the work of unit employees, for example, the inbound and outbound functions. Management trainee Brunner testified that at the Memphis facility a trainee has to be "a jack of all trades. You need to know how to do everything from dispatching to customer service to tracing to being a receptionist." He described the goal of the trainee position as it was explained to him by the Employer when he was hired: to learn all aspects of the trucking business in order to qualify for a management position.

Fourth, it is apparent that while many of the terms and conditions of employment of both the trainees currently working in the general office area and the unit employees are similar, there is a significant distinction: One of the Employer's evaluation forms is specifically

² The judge and the Board majority went on in *Curtis* to find that the management trainees were managerial employees excluded from the protection of the Act, an issue that is not raised and that we do not address in this case. The factors relied on in that case, however, are relevant to analyzing the community of interest of the management trainees here.

³ The Regional Director found that failed candidates might be assigned to sales positions.

designed for trainees, and includes an appraisal of their supervisory capability. Furthermore, trainees are evaluated twice a year, while unit employees' appraisals are annual.

After carefully weighing the community-of-interest question, we find that the four trainees should be excluded. The essential and overriding interest of the trainees is their goal of qualifying for a management position. This is why they were hired, and why they are classified as "trainees." The Employer's evaluation of their performance, both in the short term and over the full course of their training period, is tied to this goal. The nature and purpose of their training program is consistent with this goal: they are expected to learn all aspects of the trucking business, not just those duties which require them to work in the general office area with the unit employees. Thus, at the Employer's discretion, they can be and are transferred to assignments having no significant relationship with unit work. It is this fundamental interest of the trainees—manifest on review of the training program and their particular employment conditions—which distinguishes their work from that of the unit employees to a degree that makes it appropriate to exclude them from the unit.

In *Pic-Way Shoe Mart*, 274 NLRB 902 (1985), cited by the Employer, the Board included management trainees with unit employees in a retail-store setting, where their terms and conditions of employment and the nature of their work were virtually the same as unit employees', there was no "up-or-out" policy, and no indication that the trainees were hired because of their special educational backgrounds. *Id.* at 903 and fn. 9. The prominent distinguishing factors in the instant case, absent in *Pic-Way*, are the Employer's discretion to assign trainees to perform work entirely different from that of unit employees as part of the goal of learning all aspects of the trucking business, and the Employer's emphasis in evaluating trainees on their management potential.

Accordingly, pursuant to the discussion above, the Acting Regional Director's exclusion of the four management trainees is affirmed.

ORDER

This proceeding is remanded to the Acting Regional Director for further appropriate action consistent with this Decision on Review.